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June 15, 1987

Mr. Purvis W. Collins  
Director, South Carolina Retirement System  
Post Office Box 11960  
Columbia, South Carolina 29211

Dear Mr. Collins:

You have requested an opinion as to whether two annuity corporations, apparently with similar if not identical ownership, constitute "two companies" within the meaning of § 9-17-20 (added 1987). That section, which is part of an act providing for an optional retirement program for employees of state colleges and universities, provides that the contracting authority shall "designate not less than two companies from which annuity contracts are to be purchased under the program."

The two companies in question are both New York corporations incorporated long prior to the enactment of the above statute. In this state, as in most others, the general rule is that "a corporation will be looked on as a legal entity until sufficient reason to the contrary appears...." Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316 (S.C. App. 1984). Reasons for ignoring a corporate identity include instances where that identity is sought to be used to "protect fraud, justify wrong, or defeat public policy..." in the sense of creating unjustness or fundamental unfairness. Id.

In this instance, this Office has very little information as to the relationship between the two corporations. However, even assuming that the relationship is extremely close, it would not necessarily appear that the policy of the statute would be thwarted simply because two companies were awarded contracts. The statute does not specify any particular degree of separateness of ownership. Needless to say, this Office does not have sufficient information to render a conclusion on questions of

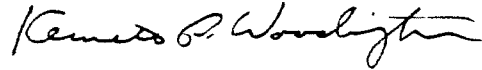
Mr. Collins

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unjustness or unfairness or other considerations which would justify ignoring corporate existence.

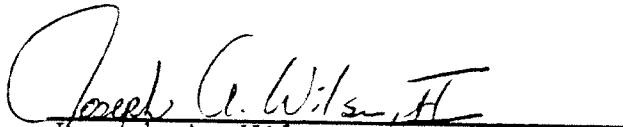
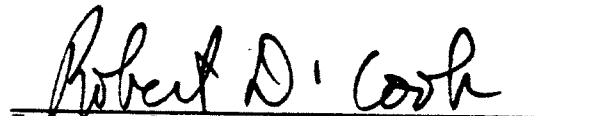
Sincerely yours,



Kenneth P. Woodington  
Senior Assistant Attorney General

KPW:jca

REVIEWED AND APPROVED:

  
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